

### **RESPONSE TO OFFICE ACTION**

Applicant wishes to respond to the Office Action, mail dated 02/19/2007, as follows:

#### **Rejections under § 102(b) Anticipation**

The examiner rejected claims 1, 2, 4, and 7 as being anticipated by Masters, et al., Pat. No. 5,077,840, under § 102(b). Each of these claims will be discussed individually below. To anticipate a claim, the reference must teach every element of a claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). The knowledge that § 102(b) relies on a strict standard of identity is critical to understanding why Masters, et al. does not anticipate these claims.

Claim 1, as amended, recites a male over spray shield comprised of a single sheet of formed plastic having an upstanding wall that is substantially semi-elliptical in shape with at least one flange means that allows the male over spray shield to attach to the toilet rim and a domed top that prevents splash out the top of the device. Claim 1, as amended, claims the teaching found in the original specification. (See page 6, line 22; page 7, line 1 of originally filed

specification. See also p. 12, ln 22; p. 1 lns 1-4). The Masters reference does not teach the use of a single piece of plastic. Particularly, the Masters reference teaches away from the use of a single piece of formed plastic. As noted in Fig. 8 and col. 3 lns. 50-54 and col. 4 lns. 64-68, Masters teaches a recessing or groove that the flanges fits into surrounded by abutments. Furthermore, as noted in Figures 4 and in the the specification at col. 4 lns. 38-40, Masters teaches the use of a U-shaped clip portion to connect out-turned flanges that form abutments used to support the apparatus.

Because the Masters reference does not teach every element of Claim 1 as amended, it would be improper to rely upon it to reject this claim under 35 U.S.C. § 102 (b). Thus, the rejection of Claim 1 based on § 102 (b) respectfully should be withdrawn.

The rejection of Claim 2, as it is dependent on Claim 1 as amended, should also respectfully be withdrawn because the Masters reference does not teach every element found in either Claim 1 or Claim 2.

Claim 4 has been withdrawn. Accordingly, its rejection is moot.

The rejection of Claim 7, as like Claim 2, it is also dependent on Claim 1 as amended, should also respectfully be withdrawn for the reasons given above.

### **Rejections under § 103(a) Obviousness**

The examiner states that claims 1, 2, 4, and 7-9 are rejected under 35 USC § 103(a) as being unpatentable over Masters and Gambla, et al.

Implicitly acknowledging that the height requirements in Claims 1, 2, and 7 were not found in the Masters reference, these claims rejected in the 02/19/2008 Office Action because the

choice of proportions appeared to be obvious choices. However, because, as noted above, Masters teaches away from the use of a single piece of formed plastic, the choice of proportions cannot be the sole reason that these claims are rejected pursuant to § 103(a). Therefore, the rejections of the claims on these grounds should be withdrawn.

Claim 4 has been withdrawn. Accordingly, its rejection is moot.

Claims 8-9 were rejected in consideration of Gambla and Masters, finding that associating an image with the wall of Masters would have been obvious to one of ordinary skill in the art. In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See MPEP 2141.02. Here, the entire invention includes a male over spray shield having an upstanding wall that is substantially semi-elliptical in shape with at least one flange means that allows the male over spray shield to attach to the toilet rim and a domed top wherein an integral recessed handle means is provided along the exterior portion of the semi-elliptical wall and the domed top for easy insertion and removal of the device and an amusing image that has been affixed to the channeling member. This invention, therefore, is not obvious in view of the references cited in the Office Action because none of those references disclose an integral recessed handle and there has not been any finding of factual support that this element would have obvious to one of ordinary skill in the art. Therefore, the rejection of Claims 8-9 based on § 103 (a) respectfully should be withdrawn.

Claims 5 and 10 were rejected in view of Masters alone, or taken with Gambla, and further in view of Whitman. While Claim 10 is withdrawn in this Response, Claim 5 as amended

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Group Art Unit No.: 3751

incorporates the recessed integral handle claimed previously in Claim 10. Masters has no handle in it, therefore there is no teaching or suggestion that would indicate that adding a handle would be obvious. Moreover, when viewed with Gambla, again there is nothing in that application which shows the unique advantages of incorporating an integral recessed handle formed along the external portion of the wall and domed top. These advantages include ease of manufacturing and a reduction in articulating areas where urine may accumulate and become difficult to remove in cleaning. Furthermore, while Whitman does have an integral handle, the handle that is disclosed does not have the added structural stability and strength that a recessed handle achieves. Moreover, the invention as a whole teaches a small opening that has a principal disadvantage of being unable to channel inaccurate liquid streams typical of many youngster because the entry angles for a liquid stream is substantially small. For these reasons, the rejection of Claim 10 based on § 103 (a) respectfully should be withdrawn.

Hence, Applicant submits that the claims of the instant application are now in condition for allowance and earnestly solicits an expedient Notice of Allowability.

Respectfully Submitted,

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